

# SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska	)	Rule and Regulation No. 197
Public Service Commission, on its	)	
own motion, seeking to amend Title	)	
291, Chapter 11, Automatic	)	ORDER RELEASING FIRST SET OF
Dialing-Announcing Devices Rules	)	PROPOSED RULES AND SEEKING
and Regulations, to review the	)	COMMENT
rules and update and clarify	)	
provisions of the rules.	)	Entered: July 12, 2016

BY THE COMMISSION:

### O P I N I O N   A N D   F I N D I N G S

On April 26, 2016, the Nebraska Public Service Commission (Commission) opened the above-captioned proceeding to amend Title 291, Chapter 11, Automatic Dialing-Announcing Devices Rules and Regulations. The Commission held a workshop on May 25, 2016, to review and consider the current rules and seek input from interested parties on updating and clarifying provisions of the rules. The Commission indicated it would make proposed changes based on the workshop and release them for comment from interested parties.

Accordingly, the Commission releases proposed rule changes, which are set forth in Appendix A, incorporated herein by this reference, for comment.

Comments on the proposed rules shall be filed by interested parties on or before **3:00 p.m., August 12, 2016**. Parties filing comments should file one original with five (5) paper copies and one (1) electronic copy emailed to [john.monroe@nebraska.gov](mailto:john.monroe@nebraska.gov) and [nichole.mulcahy@nebraska.gov](mailto:nichole.mulcahy@nebraska.gov).

### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that proposed rules amending Title 291, Chapter 11, Automatic Dialing-Announcing Devices Rules and Regulations be, and are hereby, released for public comment.

IT IS FURTHER ORDERED that interested parties file comments on or before **3:00 p.m., August 12, 2016**. Parties filing comments should file one original with five (5) paper copies and one (1) electronic copy emailed to [john.monroe@nebraska.gov](mailto:john.monroe@nebraska.gov) and [nichole.mulcahy@nebraska.gov](mailto:nichole.mulcahy@nebraska.gov).

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 12<sup>th</sup> day of July, 2016.

COMMISSIONERS CONCURRING:

*Crystal Knodes*  
*Reed*  
*Gerald L. Lip*

//s//Frank E. Landis  
//s//Tim Schram

NEBRASKA PUBLIC SERVICE COMMISSION

*Tim Schram*  
Chairman

ATTEST:

*Jeffery L. Puley*  
Executive Director

APPENDIX A

003 AUTOMATIC DIALING-ANNOUNCING DEVICES USED FOR TELEPHONE SOLICITATIONS AND UNSOLICITED ADVERTISEMENTS:

003.01 Hours: A person may only make a telephone solicitation or unsolicited advertisement using an automatic dialing-announcing device to a residential telephone line between the hours of 8:00 a.m. and 9:00 p.m., Monday through Saturday, and between the hours of 1:00 p.m. and 9:00 p.m., Sunday and legal holidays. All times indicated are local times of the party called.

003.02 Time Limit: No message transmitted by any automatic dialing-announcing device used for telephone solicitations or unsolicited advertisements shall exceed two (2) minutes in length.

003.03 Message Requirements: A person using an automatic dialing-announcing device for the purpose of making telephone solicitations or unsolicited advertisements shall deliver a message which:

003.03A Within the first twenty-five (25) seconds of the call  
~~At the beginning of the message~~ clearly states the identity of the person making the call.

003.03B During or after the message, clearly states the telephone number, other than that of the device which made the call, or address of the person. Address shall include street address, website address, or email address.

003.04 Filing of Script: A person using an automatic dialing-announcing device for telephone solicitations or unsolicited advertisements or contracting with a third party to connect or operate an automatic-dialing announcing device for the purpose of making telephone solicitations or unsolicited advertisements shall file with the Commission the message to be used and any subsequent change to the message ~~shall be filed with the Commission~~ within five (5) days of beginning to transmit the new message. ~~after the message is transmitted.~~ In the event the five (5) day period for filing scripts falls on a weekend or holiday, the script shall be due the next business day. ~~after the change.~~

003.04A Script filings shall include the permit number of the automatic dialing-announcing device transmitting the script, the date the script first began to be transmitted, and an electronic audio file that indicates the run time of the message.

003.05 Do-Not-Call Lists: A person shall not make a telephone solicitation or unsolicited advertisement to a residential or business telephone line unless the caller has instituted procedures for maintaining a list of telephone subscribers who do not wish to receive telephone solicitations or unsolicited advertisements made by, or on behalf of, the caller. A caller shall at no time make telephone solicitations or

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unadvertised solicitations to subscribers on such list. Such procedures shall meet the following minimum standards:

003.05A A written policy, available upon demand, for maintaining a do-not-call list must be established.

003.05B Personnel engaged in any aspect of telephone solicitation or unsolicited advertisement must be informed of the existence of and trained in the use of the do-not-call list.

003.05C If a person making a telephone solicitation or unsolicited advertisement, or on whose behalf a solicitation or advertisement is made, receives a request from a residential or business telephone subscriber not to receive calls from that person, the person shall record the request and place the subscriber's name and telephone number on the do-not-call list and the time the request is made. If the requests are recorded or maintained by someone other than the person on whose behalf the telephone solicitation or unsolicited advertisement is made, the person on whose behalf the solicitation or advertisement is made shall be liable for any failure to honor the do-not-call request. In order to protect a telephone subscriber's privacy, a person making telephone solicitations or unsolicited advertisements shall obtain a telephone subscriber's prior express consent to share the telephone subscriber's request not to be called with, or to forward such request to, someone other than the person on whose behalf a telephone solicitation or unsolicited advertisement is made or an affiliated entity.

003.05D In the absence of a specific request by a telephone subscriber to the contrary, a residential or business telephone subscriber's do-not-call request shall apply to the particular person making the call or on whose behalf a call is made and shall not apply to affiliated entities unless the telephone subscriber reasonably would expect them to be included given the identification of the caller and the product being advertised.

003.05E A person making telephone solicitations or unsolicited advertisements shall maintain a do-not-call list for the purpose of any future telephone solicitations or unsolicited advertisements.

003.06 Emergency Numbers; Restrictions: A person shall not initiate a telephone solicitation or unsolicited advertisement, other than a call made for emergency purposes, using an automatic dialing-announcing device to:

003.06A An emergency telephone line, including 911 or any emergency or business line of a hospital, physician or medical service office, health care facility, poison control center, fire protection agency, or law enforcement agency;

003.06B The telephone line of any guest room of a hospital, health care facility, nursing home, or similar facility;

003.06C Any telephone number assigned to a paging service, a cellular telephone service, a specialized mobile radio service, any other radio common carrier service, or any service for which the person is charged for the call; or,

003.06D A residential or business telephone line unless the telephone solicitation or unsolicited advertisement is otherwise permitted by Neb. Rev. Stat. Sections 86-236 to 86-257.

003.07 Inspection: The permit holder shall inspect the automatic dialing-announcing device at least once a month to ensure proper operation and compliance with these rules, and shall maintain a record of such inspections for at least two (2) years. All automatic dialing-announcing devices used for telephone solicitations or unsolicited advertisements may be inspected by the Commission during the hours of operation specified in the application.

003.08 Facsimile Telephone Solicitation; Prohibited Use: A person shall not use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.

003.09 Joint and Several Liability: A person contracting with a third party to connect or operate an automatic dialing-announcing device for the purpose of making telephone solicitations on any telephone line shall be jointly and severally liable with the third party for connecting and operating the automatic dialing-announcing device in violation of the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated under the act.

004 AUTOMATIC DIALING-ANNOUNCING DEVICES USED FOR OTHER THAN TELEPHONE SOLICITATIONS OR UNSOLICITED ADVERTISEMENTS:

004.01 Registration: Any person using an automatic dialing-announcing device other than for telephone solicitations or unsolicited advertisements shall register the device with the Commission pursuant to the application process, without a fee, and shall include with the application a detailed explanation of the use planned and the message to be used.

004.02 Hours: A person may only make a telephone call for other than solicitation purposes using an automatic dialing-announcing device between the hours of 8:00 a.m. and 9:00 p.m., Monday through Saturday, and between the hours of 1:00 p.m. and 9:00 p.m., Sunday and legal holidays. All times indicated are local times of the party called.

004.03 Time Limit: No message transmitted by any automatic dialing-announcing device used for other than solicitation purposes shall exceed two (2) minutes in length. For messages allowing for called party inputs, including by not limited to polls or surveys, time for called party responses shall not be included in the calculation of the length of the message.

004.04 Message Requirements: A person using an automatic dialing-announcing device other than for telephone solicitations or unsolicited advertisements shall deliver a message which:

004.04A Within the first twenty-five (25) seconds of the call ~~At the beginning of the message states~~ clearly state the identity of the person paying for ~~on whose behalf~~ the message being transmitted;

004.04B During or after the message, clearly states the telephone number, other than that of the device which made the call, or address of the person operating the device. Address shall include street address, website address, or email address.

004.05 Exceptions to Registration: Section 004 does not apply to:

004.05A A message from any elementary, secondary, or postsecondary educational institution to any of its students, parents, or employees;

004.05B A message to a person with whom the person placing the call or the person on whose behalf the message is being transmitted has an established business or personal relationship;

004.05C A message from an employer advising any of its employees of work schedules; or

004.05D A message from a political subdivision as defined in Neb. Rev. Stat. § 13-903.

004.06 Filing of Script: A person using an automatic dialing-announcing device other than for telephone solicitations or unsolicited advertisements or contracting with a third party to connect or operate an automatic dialing-announcing device for other than telephone solicitations shall file with the Commission the message to be used within twenty-four (24) hours of beginning to transmit the message. ~~after the message is transmitted.~~ In the event the twenty-four (24) hour period for filing scripts falls on a weekend or holiday, the script shall be due the next business day.

004.06A Script filings shall include the registration number of the automatic dialing-announcing device transmitting the script, the date the script first began to be transmitted, and an electronic audio file that indicates the run time of the message.

004.07 Joint and Several Liability: A person contracting with a third party to connect or operate an automatic dialing-announcing device for other than telephone solicitations shall be jointly and severally liable with the third party for connecting and operating the automatic dialing-announcing device in violation of the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated under the act.